

# Guidelines to Conducting OPR Investigations

**Delegated Investigation/Adjudication**

**Delegated Investigation**

**Non-Delegated Investigation**

**Preliminary Inquiries**

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**GUIDELINES FOR CONDUCTING OFFICE OF PROFESSIONAL RESPONSIBILITY  
(OPR) INVESTIGATIONS: Delegated Investigation/ Adjudication Cases (DIAs);  
Delegated Investigations (DIs); and Non-delegated Cases (NDs)**

*An EC has been sent to your division to investigate an OPR matter. This enclosure contains OPR procedural, investigative, and documentation guidelines and should be reviewed prior to commencing the investigation, and adhered to during the investigation.*

**BACKGROUND**

The Director, by OPR EC to All Divisions dated 07/18/2002, entitled *Delegation of Disciplinary Action Authorities to EADs, ADICs, SACs, and FBIHQ Division Heads*, established new disciplinary authorities and policy for the conduct of OPR investigations associated with allegations of employee misconduct. There are now three methods for the conduct of these investigations. First, in certain articulated violation codes, OPR investigations will be delegated to Division Heads for both investigation and adjudication (DIAs). (Investigative information specific to DIAs is set forth under that heading in these guidelines below.) Second, although some OPR investigations will be delegated to Division Heads, they are required to be adjudicated at OPR because of the complexity or seriousness of the matter. These cases are delegated for investigation only (DIs). Third, some investigations are conducted and adjudicated solely by OPR personnel; these are non-delegated matters (NDs).

Division Heads receiving OPR cases delegated for investigation only (DIs) as well as non-delegated investigations conducted by OPR, are not affected by the new policy guidelines set forth in OPR EC to All Divisions dated 07/18/2002. These matters will continue to be investigated in accordance with MIOG, Part I, Section 263, and the Director's airtels to all ADICs, *et al.*, entitled "Delegations of Disciplinary Action Authorities to ADICs and FBIHQ Division Heads," dated 2/23/94 and 1/30/95. Division Heads are reminded of guidance set forth in these airtels in which it is noted that no administrative action may be taken with respect to employees under your supervision in OPR investigations unless expressly authorized by OPR, upon OPR's receipt and review of the investigative results of the inquiry.

**OPR Notification Form** - Once an allegation of misconduct is brought to the attention of FBI OPR, the allegation is reviewed by the Department of Justice-Office of Inspector General (DOJ/OIG) and a determination is made regarding investigative responsibility for the alleged misconduct. If the DOJ/OIG defers the matter to FBI OPR for investigation, and the matter is suitable for delegation, OPR will forward to the Division Head two copies of an OPR Notification Form containing information for the employee. The OPR case supervisor will be identified at the bottom of the Notification Form. The Division Head or his representative should present the employee with the OPR

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Notification Form, and enclosed information, upon receipt. The division representative presenting the employee with the OPR Notification Form should sign and date both forms, have the employee sign and date both forms, read the allegation of misconduct to the employee, provide the employee with the enclosed OPR forms, "*The FBI's Disciplinary Process*," "*OPR Disciplinary Process: Disclosure of Information to Attorneys*," and "*Non-Disclosure Agreement*;" review the information on the Notification Form with the employee and emphasize two points 1) the availability of counseling to the employee from the Employee Assistance Program (EAP) and 2) the employee has the opportunity, prior to being interviewed, to voluntarily provide documentation, information, or explanation, to OPR that may assist in the resolution of the investigation.

One of the signed, original Notification Forms will be returned to OPR along with the original executed disclosure forms **if the employee has chosen to be represented by a privately retained attorney.** The other original Notification Form will be given to the employee. The Division Head should make copies of these forms for the office file and for the assistance of the Agent assigned to conduct the investigation. Prior to commencing the investigation, the Agent assigned to conduct the investigation should confirm that the Notification Form has been presented to the employee and if the employee is represented by an attorney. If the employee to be interviewed has retained an attorney, the Agent assigned to conduct the OPR investigation should review those sections of the OPR form entitled "*The FBI's Disciplinary Process*," pertaining to attorney representation prior to interviewing the employee.

The Notification Form title will be styled to include identification of the employee who is the subject of the investigation as well as OPR's determination that the investigative case is a DIA, DI, or ND matter. The Notification Form for DIAs will advise the subject employee that the matter has been delegated to the Division Head for both investigation and adjudication; otherwise, adjudication responsibility will be retained by OPR. **Upon receipt of the Notification Form, the Division Head should not conduct any investigation of the alleged misconduct until advised by OPR.** OPR will delegate the investigative matter to a Division Head by an EC that may contain specific FBI policy and/or investigative matters to be addressed in the investigation.

After presentation of the notification form to the subject(s), the employee should be given a sufficient amount of time to refresh their memory before information is requested from them. A reasonable amount of time, not to exceed (10) ten days, is suggested between the subject employee's receipt of the Notification Form and the employee's interview. The employee may opt to waive this time period and agree to be interviewed immediately or otherwise within the suggested waiting period. This time period will permit the employee time to decide if they want legal representation, to retain an attorney, and/or

to collect whatever documents or information they want to voluntarily provide to OPR, or to prepare a statement for OPR concerning their alleged misconduct.

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## CONDUCTING THE INVESTIGATION

The following information applies to all OPR investigative matters:

The term "investigation," for the purpose of these guidelines, is inclusive of both the investigation and adjudication of the DIA OPR matter.

The Division Head will not begin the investigation of the delegated OPR matter (DIA and DI) until advised by EC from OPR.

**Investigative EC** - Upon receipt of the OPR EC initiating the investigation, and review of any referenced policy matters set forth in the EC, the investigation should specifically address each allegation of misconduct and the elements that constitute the policy/procedure that has allegedly been violated. All logical areas of inquiry should be pursued. Interview areas of inquiry should be developed from review of information collected during the investigation. Derivative, logical follow-up questions should be asked during interviews to fully address the alleged misconduct of the subject employee(s). Persons interviewed should be reminded to be forthcoming with information and, in furtherance of candid disclosure, not limit their response specifically to the strictest meaning of a word or phrase within a question but rather to focus upon the intent of the question.

**Investigative Quality Control** - It is the Division Head's responsibility, or the responsibility of other members of the division's executive management staff to whom this OPR matter has been delegated, to review the investigation conducted and to ensure the investigation is complete, that all logical investigation has been conducted, and that the signed, sworn statements (SSSs) and unsworn statements conform to both FBI policy and OPR procedures, that reporting Bureau Deadlines (BUDEDs) are met, and reports are completed in accordance with procedures and instructions contained in OPR EC to All Divisions dated 07/18/2002, prior to submission of the completed investigation to OPR.

**Investigative Personnel Assignment** - The investigation is to be conducted in accordance with MIOG, Part I, Section 263, except where superseded by OPR EC to All Divisions dated 07/18/2002. The investigation of this matter, except as noted below, will be assigned to senior, mature, Supervisory Special Agents (paygrade GS-14 or higher) having no direct investigative or performance responsibility with regard to the subject employee or with witnesses in this inquiry. In exceptional circumstance, to be decided by the Division Head, a senior paygrade GS-13 Special Agent may be assigned to conduct the investigation with the approval of the OPR case supervisor. The Division EC to OPR forwarding the investigative results of the OPR matter should set forth the exceptional circumstance for the investigation being conducted by a senior paygrade GS-13 employee and the name and date of the OPR case supervisor approving the request. FBIHQ Divisions, in the absence of an SSA at the paygrade GS-14, may assign paygrade GS-13 and higher Agent or Support Employee Program Managers to

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conduct the OPR investigation. Employees who are under OPR investigation, or have been the subject of disciplinary action within the last three years, are not to be assigned to conduct OPR investigations. Questions regarding the investigation of this case should be referred to the OPR case supervisor listed on either the employee's OPR Notification Form or the OPR EC to which this document is an enclosure.

**Bureau Deadline (BUDED)** - This investigation should be completed by the **BUDED**. Extensions to the **BUDED** may be granted, under extenuating circumstances, by contacting the OPR case supervisor for approval. This investigative matter must be completed in a timely manner to conform with the terms of civil litigation to which the FBI is a party, (Johnson, et al. v. Reno, Civ. No. 93-0206 TFH (BADGE)). Failure to comply with the **BUDED** will require OPR to submit a report to the AD, OPR, and to advise the Inspection Division of delayed reporting practices by the division for further review during the next division inspection. Delayed investigation evidenced by failure to meet the **BUDED** will be reported to the Director as a performance issue for consideration in the Division Head's annual performance report.

**Record Documentation** - All record reviews, with positive or negative results, and analysis conducted, should be documented by form FD-302. All documents and other material objects collected pertinent to the OPR investigation will be recorded on a form FD-302 to show the date and place of acquisition and to fully describe the document, or material object, retained.

**Employee Admissions (non-criminal misconduct)** - If in the course of conducting the OPR investigation, the subject employee makes voluntary admissions to additional non-criminal misconduct outside of the issued Notification Form, the Division Head should notify the OPR case supervisor. The employee will subsequently receive a new Notification Form from the AD, OPR, delineating the new allegations. The new notification may result in further investigation and interviews. If the employee's admissions occur during the employee's interview, the interview can continue, provided the employee stipulates to their awareness that they will receive a new Notification Form delineating the new allegations of misconduct. This advisory statement and the employee's affirmative response acknowledging the statement and their desire to continue the interview will be included in the employee's SSS. The employee's SSS will thereafter contain information provided by the employee concerning his/her self-admitted misconduct. If the employee will not stipulate, the advisory statement and the employee's negative response acknowledging the statement and their desire not to be interviewed on the new self-admitted allegations of misconduct will be included in the employee's SSS, and the

interview will continue within the scope of the alleged misconduct in the employee's Notification Form.

**Employee Criminal Activity or Misconduct** - If the investigation determines that the subject employee has participated in, or is making admissions of, criminal

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activity or misconduct, then the investigation and/or interview of the employee regarding the alleged criminal activity or misconduct cannot be pursued until so authorized by AD, OPR. The scope of the investigation and/or interview may proceed in accordance with the notification or the guidance contained in the previous paragraph. The interviewers are to immediately contact the OPR case supervisor, followed by an EC with the known information, and are to conduct no additional investigation. In turn, OPR will consult with the Department of Justice (DOJ), Office of Professional Responsibility (DOJ/OPR), or other DOJ entity as appropriate, for a prosecutive opinion. Based upon these consultations, OPR will forward the appropriate notification and guidance to the concerned division. This guidance is to ensure compliance with the parameters and spirit of the Director's March 1997 "Brightline" communication.

**Automated Case Support (ACS) System** - Documents and/or reports prepared during the course of this investigation **must not be uploaded** into the ACS System until advised to the contrary by OPR. Should the division find it necessary to set forth leads to other divisions, in furtherance of this OPR investigation, those divisions should be advised of this restriction in the Administrative Section of the transmitted EC.

#### INVESTIGATIVE ISSUES

**Electronic Surveillance** - AD, OPR, authorization must be obtained prior to the initiation of physical or electronic surveillance (to include consensual body/telephone monitoring, closed circuit TV coverage, pen registers) targeting an FBI employee. Some of these techniques may also require DOJ authority.

**Polygraphs** - If a Division Head believes a polygraph examination is necessary to resolve an issue in the OPR investigation, AD, OPR, authorization pursuant to MIOG, Part I, Section 263-6 is required, for subject and witness employees, in both voluntary examination requests and compelled polygraph examinations conducted on a Substantial Objective Basis (SOB), as set forth in the MIOG, Part II, Section 13-22.13.1. A polygraph is an investigative tool only. As an investigative tool, the results of a polygraph examination must be considered with other evidence and should not be considered alone. Disciplinary action will not be predicated solely upon the results of a polygraph examination or upon the refusal to submit to a polygraph examination. If an employee refuses to take an SOB polygraph under an OPR inquiry, OPR or the Division Head can only make an adverse inference during the adjudication process. The request for authorization to conduct these examinations, accompanied by sufficient justification to support the request, should be submitted to OPR by EC.

**Drug Testing** - The authority to grant a request for an employee to take a reasonable suspicion drug test rests with the AD, OPR. The request must be communicated in writing with a factual summary substantiating the basis for the employee's suspected illegal drug use. Once the AD, OPR, has approved the reasonable suspicion drug test, the OPR case supervisor will contact the Drug Deterrence Program (DDP) to request a drug test for the employee. The DDP representative will contact the requesting division and make the necessary

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arrangements for the drug test. The DDP will notify OPR of the results of the drug test, and then OPR will notify the division.

**Alcohol Policy** - Division Heads are reminded of the requirement set forth in the MAOP, Part I, Section 1-30.3(7), that in the matter of alleged alcohol-related employee misconduct, the Division Head, "... in addition to notifying OPR, will conduct an inquiry specifically focused on whether the employee suffers from alcohol-related problems. The results of that inquiry will be documented in the employee's official personnel file." Division Heads will report the results of the employee alcohol-related misconduct inquiry (MAOP Part I, Section 1-30.3(7)) as a part of the Division's response to Douglas Factor question #7, "Mitigating circumstances..." in their investigative summary EC to OPR.

**Administrative Leave** - A Division Head may request to place an employee on Administrative Leave for disciplinary reasons. In this instance, the Division Head must submit justification in writing to the AD, OPR. After the AD, OPR, approves the request, a response will be promptly returned to the division.

**Personal Relationships Policy** - Division Heads should be cognizant of the Director's PERSONAL RELATIONSHIPS POLICY as set forth in his Memorandum to All Employees dated 03/27/2002 (Memo 5-2001) and the policy's relationship to OPR investigations:

First, the private lives of FBI employees, and their relationships with others, are subject to inquiry by OPR only when the conduct may: (1) negatively impact upon the ability of the Bureau to perform its responsibilities; (2) violate the law; or (3) violate an internal regulation. The investigative approach will be in accordance with the MAOP, Part I, Section 1-12.2. "Whenever feasible, OPR inquiries will be structured to avoid exploring romantic or intimate relationships if other factual issues will resolve the inquiry or if a general acknowledgment of the relationship sufficiently establishes the offense. Although OPR investigators need not negotiate with a witness or subject over the information to be provided, they should explain the relevancy of the information being sought. OPR's ability to compel responses, even when the questions may be personal or embarrassing, carries with it an obligation to ensure that the questioning and the documentation of the employee's statement are respectful, discreet, and dignified as is consistent with establishing all the relevant facts impacting upon FBI operations and the performance of the FBI's mission." Contact OPR for additional guidelines for conducting investigations associated with personal relationships.

Second, Division Heads should consider the policy's five defined areas of relationships and the policy's discussion of the "appearance of impropriety" and their application to persons assigned to investigate and adjudicate OPR matters as well as the Division Head's personal relationship with subordinate personnel. If necessary, OPR should be advised as soon as possible of a Division Head's recusal from an OPR matter.

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**Outside Agency Liaison** - If investigation requires the interview of employees of another law enforcement agency, the investigator conducting the investigation should make the Division Head aware of the need for that contact and thereafter a liaison contact with an officer of appropriate rank should be made to request permission to interview the officer/Agent. If allegations of misconduct are developed against officers of local/state law enforcement departments/agencies associated with the investigation of the FBI OPR investigation, the Division Head should be advised and the information transmitted to the appropriate officer of the local/state law enforcement department/agency. If information involving misconduct by a Federal Law Enforcement Officer is developed during the course of an FBI OPR investigation, the OPR case supervisor should be notified and the information provided to OPR by EC. OPR will transmit the information to the Federal Agency involved.

**Douglas Factors** - Upon completion of the investigative portion of the OPR investigation, Douglas Factor information concerning the subject employee must be collected by the employee conducting the investigation. In DIAs, this data collection will be conducted by the person assigned by the Division Head to conduct the adjudication phase of the investigation. The requested information is required pursuant to a legal decision by the Merit Systems Protection Board in the matter of Curtis Douglas v. Veterans Administration, et al.; 5 MSPB 313 and 5 MSPR 280. The Douglas Factor information is set forth below and should be presented in a question and answer format in the summary EC submitted to OPR. The Douglas Factor information should be provided to OPR in all circumstances, to include the circumstance of a Division Head recommending that there be no disciplinary action and/or that a matter be closed.

It is requested that the following be addressed in your response (Douglas Factors):

1. The relationship of the alleged offense to the employee's duties and position and its impact on management's confidence in the employee's ability to perform;
2. The employee's past disciplinary record;
3. The employee's recent performance record and reputation within the workplace;
4. The notoriety of the offense within and outside the FBI or its impact upon the reputation of the FBI;
5. The clarity with which the employee was on notice of any rules that were violated or had been warned about the conduct in question;
6. The potential for the employee's rehabilitation;

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- Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter.

## WHISTLEBLOWER PROTECTIONS FOR EMPLOYEES

The Director has established policy concerning his firm commitment to the protection of employees who report organizational wrongdoing. This Memorandum to All Employees dated 11/07/2001, number 12-2001, entitled *WHISTLEBLOWER PROTECTIONS FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES* should be reviewed for further information concerning the Director's policy statement. This policy statement is available on the ASD Intranet Website.

## CONDUCTING THE INTERVIEW

The following information applies to all OPR investigative matters, unless otherwise noted or specifically set forth elsewhere in these guidelines:

**Non-FBI employees** - Interviews must be reported utilizing a form FD-302. Interviews may be conducted telephonically by one person.

**FBI employees** - Interviews must be reported in the form of a **typed, double spaced**, signed, sworn statement (SSS). The SSS should be prepared in compliance with the standard FBI format for Statements Taken Under Oath as set forth in the Legal Handbook for Special Agents (LHBSA), Section 7-12-15, and include the several declarations required by OPR that are set forth below. A formatted SSS for administrative investigations using the *ACKNOWLEDGMENT OF EMPLOYEE REQUIRED TO PROVIDE INFORMATION* form (*ACKNOWLEDGMENT* form) (**ATTACHMENT A**) and incorporating all the requisite language in standard FBI format is attached to this document for use by recipients. (**ATTACHMENT B**) (**NOTE: The Acknowledgment form is an interim replacement form pending revisions to the form FD-645. The revised form FD-645, when issued, will replace the Acknowledgment form.**)

**SSS Interview Protocol** - All employee interviews will be conducted and witnessed by two personnel in person with the subject employee or witness, unless instructed otherwise by the OPR case supervisor. An interview log will be maintained during the interview, noting persons present for the interview, logging the time the interview is initiated and completed, the time the *ACKNOWLEDGMENT* form is signed, the time the employee is administered the oath, etc. The log should also note when any breaks were offered the interviewee. At least one investigator conducting the interview will maintain notes of the interview. In preparing a draft of the employee's statement, both investigators must agree on the content of the statement, e.g. what the employee said during the interview, prior to presenting the statement to the employee

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for signature. Disagreement concerning the content of the employee's statement will be resolved by re-interviewing the employee regarding the salient point(s). In re-interviewing an employee under the same *ACKNOWLEDGMENT* form allegation of misconduct, it is not necessary to re-present the form for employee signature and acknowledgment. The employee should be advised of the purpose of the interview and reminded that he/she is still under oath. The information obtained in this re-interview may be incorporated into the initial statement, noting the date and circumstance it was obtained, and thereafter presented to the employee for signature.

Unless authorized by OPR, neither the subject employee nor employee witnesses will be shown or read the content of any OPR communication. The SSS will be prepared by the investigator based upon oral statements made by the employee during the interview. Under no circumstance is the employee to write his/her own statement from the interview. The employee is to be given the opportunity to review for accuracy the information contained in his/her statement and to make corrections to the statement. The employee will review the statement in the presence of the investigator. Under no circumstance will the employee be permitted to make corrections to the statement outside the presence of the investigator, take their statement home overnight, transmit (facsimile) the statement to an attorney or other third party, or to permit another person to make corrections to the statement. An attorney retained by the employee may advise the employee regarding language in the statement but the attorney cannot write or edit the statement for the employee. After the employee has signed a statement in an administrative inquiry, the employee should be provided a copy of the unsigned statement and advised that it is a Bureau document and must be afforded appropriate security. A SSS in a criminal matter should not be provided to the employee.

**SSS Employee Interview with Administrative Warning (ACKNOWLEDGMENT form)**

Before conducting the interview and placing the employee under oath, the employee must be advised of the following information by the Agent conducting the interview and this information will be set forth in the SSS:

1) Present the employee with the *ACKNOWLEDGMENT* form, and obtain the employee's signature acknowledging understanding of their rights and responsibilities in this OPR investigation. (NOTE: Prior to presenting the *ACKNOWLEDGMENT* form to the employee being interviewed, the Agent conducting the investigation will complete the *ACKNOWLEDGMENT* form by writing or typing the purpose of the inquiry onto the form. The purpose of the inquiry is the allegation of misconduct that appears on the subject employee's OPR Notification Form, and should be set forth specifically in the *ACKNOWLEDGMENT* form space allotted for "This inquiry pertains to....").

2) The employee must be advised of the Director's "Bright Line Policy," that if they lie during an inquiry, they can expect to be dismissed from the rolls of the FBI. This information is incorporated in the language set forth in the *Acknowledgment* form,

but not expressly stated as the Director's policy;

The information contained in paragraphs one and two will be set forth in the employee's SSS by including the following sentence toward the outset of the statement: **"I understand from my review of the Acknowledgment form that should I refuse to answer or fail to reply fully and truthfully during this interview, which I further understand would place me in violation of the Director's 'Bright Line' policy, I can expect to be dismissed from the FBI."**

**Placing Employee under Oath** - Prior to conducting the interview, the employee must be sworn-in by the investigator conducting the interview. The employee will raise his/her right hand and the Agent will administer the oath by stating **"Do you swear or affirm that the information you are about to provide is true, accurate, and complete, to the best of your knowledge."** The employee must respond in the affirmative before proceeding with the interview. If the employee does not, end the interview and notify the OPR case supervisor.

If the employee refuses to sign the *ACKNOWLEDGMENT* form, or refuses to swear or affirm to the oath, or once placed under oath the employee refuses to participate in the interview, the interview will be terminated. The investigator conducting the interview will prepare a report of the matter on a form FD-302 to specifically describe the employee's receipt and review of the *ACKNOWLEDGMENT* form and any reason given by the employee for refusing to sign the *ACKNOWLEDGMENT* form, swear the oath, or participate in the interview. It should be specifically noted in the report that the employee was aware, as set forth on the *ACKNOWLEDGMENT* form, that the employee had a duty to reply to questions and refusal to answer or failure to reply fully and truthfully could result in agency disciplinary action, including dismissal. The form FD-302 should be initialed by the two FBI personnel witnessing the interview. The OPR case supervisor should be contacted immediately and advised of the matter.

**In concluding the interview, with the employee still under oath, the employee will be advised of the following and it will be documented in the employee's SSS:**

1) As a matter of FBI policy, employees will be asked to take a voluntary polygraph examination regarding the information reported in their SSS. This request and response will be recorded in the SSS as **"I (will/will not) take a voluntary polygraph examination concerning the truthfulness of the information contained in this signed, sworn statement."**

2) The employee should be told that should any additional information come to their attention, or if they wish to provide information which the interviewers consider inappropriate for inclusion in the SSS, they may voluntarily provide that information to OPR in writing. This will be documented in the SSS as **"I have no other pertinent**

information regarding the aforementioned allegation. I have been advised that I may and should submit any additional information of which I may become aware, regarding this inquiry, to the Office of Professional Responsibility."

3) The employee should be advised that they are restricted in discussing the OPR investigation and the contents of the interview. The following advisory statement will be set forth in the concluding paragraph of the employee's SSS: "I have been instructed not to discuss this matter with anyone other than the person(s) conducting this interview, representatives from the OPR, FBIHQ, an FBI Employee Assistance Program (EAP) Counselor, my attorney (providing I have submitted the appropriate forms), and a representative of the Ombudsman's office. I have been told that should I decide to discuss this matter with anyone else, I must first obtain authorization from the interviewer(s)."

The final sentence in the SSS, prior to the employee's signature, should read, "I have read this statement, consisting of this and X other pages, and it is true and correct to the best of my knowledge." (The total amount of pages of the SSS, other than the signatory page, should be substituted for the X.)

**Signing the Statement Protocol** - Before the employee signs the statement, the Agent will again swear-in the employee. The employee will raise his/her right hand and the Agent will administer the oath by stating "Do you swear or affirm that the information you have provided in the statement before you is true, accurate, and complete, to the best of your knowledge." The employee must respond in the affirmative before proceeding with the employee signing the statement. If the employee does not, end the meeting and notify the OPR case supervisor. The investigators will document the employee's refusal to swear or affirm the oath prior to signing their statement and any reason provided by the employee for not swearing or affirming the oath in a form FD-302 and attach a copy of the unsigned sworn statement attesting that the information provided in the statement was obtained under oath by the investigators conducting the interview.

After signing the statement, the employee should initial the beginning and the end of the text on each page of the SSS. This process will be witnessed by two investigators and attested to by their signatures at the end of the SSS. When the completed statement is presented to the employee for signature, the personnel presenting the statement for the employee's signature, administering the oath to the employee swearing or affirming to the truth of the statement, and witnessing the employee initialing each page, do not necessarily have to be the same two persons who conducted the employee interview and placed the employee under oath. These employees are only administering an oath to the employee, and attesting by their signatures that the employee swore or affirmed the oath, signed the statement, and initialed the pages of the statement in their presence.

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**Recanted Employee Statements** - While taking a SSS, an employee is placed under oath at the initiation of the interview; therefore, they are required to tell the truth. If an employee originally recalls something incorrectly but arrives at the truth before signing the statement, the initial misstatement is considered to have been recanted, or corrected. Even a deliberate lie may be so corrected, although the statement itself or a separate FD-302 will reflect that a factual assertion or denial was made and then changed, as that change of recollection is relevant to credibility. So long as the employee corrects a false assertion prior to signing the SSS, the original falsehood by itself will not be punished with dismissal for lying under oath. Should a lack of candor issue arise at any time during the investigation, or a non-delegated matter be evidenced, notify the OPR case supervisor for further direction.

All copies of an employee's statement presented to the employee, upon which the employee makes changes prior to swearing/affirming to and signing their statement, are to be retained by the Agent, marked sequentially as "DRAFT #1," etc., and retained in a 1A envelope (FD-340) for submission to OPR in the Division's summary EC. If the employee makes substantive material changes in his/her statement between the time of the interview and the obtaining of the employee's SSS, the interviewing Agent will prepare a FD-302 documenting those changes in a comparative method and forward that report to OPR in the Division's summary EC. As set forth in the preceding paragraph, the employee's "change of recollection" is relevant to the employee's credibility and will be included in deliberations for disciplinary action during the adjudication phase of this investigation.

**SSS Document Referrals** - All documents presented to the employee during the interview for comment or provided by the employee and commented upon during the interview, will be made a part of the SSS by either reference or incorporation as desired by the employee. If the document is included by reference, the document will be specifically identified in the SSS and the document included in the Division's summary EC to OPR. (The source of the document, e.g. how and when it was acquired, will be recorded on a FD-302.) If the document is included by incorporation into the SSS, the document will be specifically identified in the SSS and thereafter attached to the end of the employee's SSS. The employee, after swearing or affirming the oath as to the truthfulness of his/her statement and signing the statement, will initial and date each page of any document attached to the SSS.

**SSS Administration** - The original SSS and two copies of the SSS will be forwarded to OPR in the Division's summary EC. All original interview notes for each employee interviewed as well as the associated interview log, the original *ACKNOWLEDGMENT* form executed by the employee, and all draft copies of the employee's statement, will be retained in a 1A envelope (FD-340) for transmittal to OPR by the summary EC.

**SSS Employee Interview with Criminal Warning (FD-644)**

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If an OPR investigative matter requires that an FBI employee be interviewed under Criminal Advice of Rights, a form FD-644 entitled *WARNING AND ASSURANCE TO EMPLOYEE REQUESTED TO PROVIDE INFORMATION ON A VOLUNTARY BASIS* will be used, and OPR will provide the Division Head with appropriate guidance in OPR's investigative EC delegating this matter to the Division Head. OPR will investigate most allegations of an FBI employee's criminal activity.

### **SSS, UNSWORN SIGNED STATEMENTS (USS) AND FD-302 INTERVIEWS**

**Privacy Act** -- Prior to conducting any OPR-related interview, the person being interviewed will be advised that this OPR investigation is governed by provisions of the **Privacy Act** (Title 5, U.S. Code, Section 552a (k)(5)). The interviewee should be cautioned that his/her identity and the information provided may, pursuant to certain administrative inquiries or judicial proceedings, be made available to the subject of the inquiry if the information is used, in whole or in part, to support an adverse personnel action, (an action resulting in a minimum disciplinary action suspending an employee from work for more than 14 days, up to and including dismissal from the role of the FBI). No promise of confidentiality should be made to FBI management officials or Agent or non-Agent supervisory personnel who are asked to furnish information concerning an employee under their supervision. If an employee requests confidentiality, this must be noted immediately after the interviewee's name, i.e. John Doe (Protect Identity). The SSS, USS, or form FD-302 interview must contain the following statement: "I am requesting confidentiality under the Freedom of Information and Privacy Acts. I have been cautioned that if adverse administrative action is taken against the subject of the investigation based on my information, my identity will most likely be disclosed, as required by law."

Conversely, if the interviewee, upon being made aware of their privacy rights, declines to protect their identity, the following statement should be included in their SSS, USS, or form FD-302 interview: "I have been advised of my confidentiality rights under the Freedom of Information and Privacy Acts and the application of those rights in this OPR investigation. I do not want my identity protected."

### **DELEGATED INVESTIGATION/ADJUDICATION CASES (DIAS)**

The Director, by OPR EC to All Divisions dated 07/18/2002, entitled *Delegation of Disciplinary Action Authorities to EADs; ADICs, SACs, and FBIHQ Division Heads*, established new disciplinary authorities and policy for the conduct of OPR investigations associated with allegations of employee misconduct. Set forth below is **investigative information** pertinent to OPR investigations delegated to Division Heads for both investigation and adjudication (DIAs)

The *SCHEDULE OF DELEGATED DISCIPLINARY ACTIONS*, an enclosure to the OPR EC to All Divisions dated 07/18/2002, creates four disciplinary levels

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containing articulated offenses and set disciplinary actions. Level One (ORAL REPRIMAND) and Level Two (LETTER OF CENSURE) DIAs do not require SSSs from the subject employee and witness employees, if the subject employee has submitted a communication (EC, e-mail or informal memorandum) providing sufficient factual details to persuasively resolve all pertinent issues and acknowledging responsibility for the disciplinary offense(s). Alternatively, a SSS is required of the subject employee and employee witness(es) for these two levels if the employee fails to provide sufficient background details, if the details provided by the employee are subject to question, or if the subject employee does not acknowledge responsibility for the disciplinary offense. **The Division Head is responsible for determining if the subject employee's voluntary statement is sufficient to not warrant the taking of SSSs.**

Level Three (Three to Seven Days Suspension) and Level Four (Ten to Fourteen Days Suspension) DIAs require SSSs of subject employee(s) and all employee witness(es).

As stated more substantively in the Background Section of these Guidelines, after receipt, OIG review, and OPR evaluation of the alleged misconduct complaint, OPR will create a case file and provide the Division Head with a Notification Form to be provided to the employee. The Notification Form for DIAs will advise the subject employee that the matter has been delegated to the Division Head for both investigation and adjudication. The case will be delegated for investigation and adjudication by the Division Head (DIAs) by an EC from OPR. **The BUDED for DiA matters will be 60 days.** The OPR EC will forward the Notification Form to the Division and will contain information designating the violation code offense level as defined by the *SCHEDULE OF DELEGATED DISCIPLINARY ACTIONS* (an enclosure to OPR EC to All Divisions dated 07/18/2002). This designation is based upon OPR's preliminary review of the information presented initiating the investigation and may be changed by the Division Head based upon investigative results. The OPR EC may contain policy and/or investigative matters to be addressed during the investigation.

If SSSs are to be taken, information previously set forth in these guidelines for the taking of SSSs should be followed.

If the subject employee and witness employees are to provide unsworn signed statements (USS), rather than a SSS, the attached format for an USS should be followed. **(ATTACHMENT C)** All FBI employees must be advised before the interview that if they lie during an inquiry, they can expect to be dismissed from the rolls of the FBI. Prior to being interviewed or providing a written statement, all FBI employees must execute the *ACKNOWLEDGMENT* form which contains, among other things, the alleged misconduct being investigated and language that advises the employee that he/she can expect to be dismissed from the rolls of the FBI if they lie during the inquiry.

If an employee refuses to sign the *ACKNOWLEDGMENT* form or is otherwise

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not participating in this compelled interview, the investigator should document the matter as set forth in the SSS Section of these guidelines and immediately notify the OPR case supervisor.

The employee's USS will contain all of the OPR required statements for SSSs, except of course, the administering of the oath.

#### **ADJUDICATION:**

OPR will adjudicate all cases delegated to Division Heads for investigation only (DI) and all non-delegated (ND) cases investigated by OPR. Information required for the adjudication of these matters will be transmitted by EC to Division Heads by OPR. In non-delegated cases (ND) investigated by OPR, Division Heads will receive an EC forwarding the entire investigation to their attention for review and submission of Douglas Factor information pertaining to the subject employee. In cases delegated to Division Heads for investigation only (DI); OPR will request by EC, submission of Douglas Factor information pertaining to the subject employee.

The information set forth below applies only to OPR cases delegated to Division Heads for investigation and adjudication (DIAs):

Once the investigative portion is completed, the case should be assigned for adjudication to a senior, mature individual not connected with the investigative portion and having no performance responsibilities over the subject employee or with witnesses in the inquiry. Adjudicators must maintain impartiality, and no personal animus should be reflected.

The adjudicator, after reviewing the investigation, will determine if each allegation is supported by a preponderance of the evidence and, if so, what discipline is warranted. In making a recommendation for discipline, the adjudicator should take into account the Douglas Factors relating to the employee's past disciplinary record, work performance, the notoriety of the offense inside and outside the FBI, and mitigating and aggravating factors. Each of these factors is to be addressed individually and reported to OPR.

#### **No Disciplinary Action Recommended**

If no discipline is warranted, you are to provide an EC which contains a synopsis of the case to OPR. If that recommendation is approved by OPR, the employee should be furnished with a No Action Letter (**ATTACHMENT D**). A copy of this letter should be filed in the 263 file but **not** in the employee's official personnel file or Squad/ Unit drop files.

#### **Level One - Oral Reprimand**

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The penalty for a Level One infraction is an Oral Reprimand. You are to provide an EC which contains a synopsis of the case (**ATTACHMENT E**). If approved by OPR, a copy of this EC is to be designated to the subject employee's official personnel file.

#### **Level Two - Letter of Censure**

Letters of Censure must contain the allegation and a finding that the allegation is substantiated. The letter will state the facts and an analysis of the facts, and the policy which the employee violated. The letter also contains a paragraph which advises the employee that a copy is being forwarded to the Security Division (**ATTACHMENT F**). If approved by OPR, a copy of this Letter of Censure is to be designated to the subject employee's official personnel file and the 263 file.

#### **Levels Three and Four - Suspensions**

Level Three and Level Four cases should have a case summary to include the employee subject's personnel history, summary of facts, analysis of the facts for each allegation, a review of Bureau policy, a conclusion and recommendation. Policy can be located in MAOP, MIOG, the Employee Handbook, various Memoranda to Division Heads, etc. The letter also advises the subject employee of his/her appeal rights and, as with oral reprimands and Letters of Censure, contains the paragraph that advises the employee that a copy of the letter is being forwarded to the Security Division (**ATTACHMENT G**). If approved by OPR, a copy of this letter is to be designated to the subject employee's official personnel file and the 263 file.

Once approved by OPR, suspensions are held in abeyance if the employee appeals. If the employee signs a waiver of his/her appeal rights, the suspension can be imposed immediately, and it can be imposed if the employee does not timely exercise his/her right to appeal (ten days after receipt of the letter imposing discipline).

#### **FORWARDING THE COMPLETED CASE:**

The following information applies to cases delegated to Division Heads for investigation only (DI), and all non-delegated (ND) cases investigated by OPR: The OPR EC forwarding this matter to your division for investigation will contain reporting requirements. Absent specific reporting requirements, the results of the investigation should be reported to OPR in the form of a summary EC (original and three copies), in accordance with OPR's EC to All Field Offices and FBIHQ Divisions, dated 1/22/98, and forwarded to OPR, to the attention of the case supervisor on the enclosed EC. An original and two copies of each SSS or FD-302 should be forwarded as enclosures to the summary EC (**ATTACHMENT H**). The original notes, interview log, and draft copies of the employee's statement, supporting each SSS or FD-302, should be placed in a 1A Envelope (FD-340) along with the corresponding **ACKNOWLEDGMENT** form. Any other original documentation should be forwarded to

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OPR as an enclosure to the summary EC.

**The information set forth below applies only to OPR cases delegated to Division Heads for investigation and adjudication (DIAs):**

After the Division Head determines an appropriate penalty, an EC and one copy is to be submitted to OPR summarizing the results of the investigation. Enclosed with the EC will be the proposed sanction in the format applicable to the offense level (see **Attachments D, E, F or G**). The EC will contain the **names of the division's investigator and adjudicator** as well as all original case file documents and 1A exhibits, original SSSs, USSs, and FD-302s with two copies, the disposition of any physical evidence acquired during the inquiry, and a copy of the communication intended to be used to communicate the discipline to the employee, including the memorialization of an oral reprimand. An additional copy of the EC and each disciplinary letter is to be designated for dissemination by OPR to the Security Division, FBIHQ, where applicable. This hard copy EC with its enclosures should be mailed to OPR, Attention Adjudication Unit-1 or Adjudication Unit-2, as applicable.

A copy of the summary EC should be e-mailed to "OPR Delegation Reports AU-1 or AU-2", with the understanding that OPR has seven working days from date of receipt of the EC/e-mail to alter the penalty.

**OTHER GUIDANCE:**

**Employee Assistance Program (EAP)** - Division management should be cognizant of the significant stress often placed on an employee who becomes the subject of an OPR inquiry and be sensitive to the mental/emotional state of that employee. Upon presentation of the OPR Notification Form, the subject of the inquiry should be provided with an Employee Assistance Program (EAP) informational brochure with the name(s) and contact number(s) of their division's EAP Representative(s) listed. If the facts of a specific case reasonably indicate that such measures are prudent, appropriate steps should be taken to afford counseling for the employee under the provisions of the EAP, or other means, to ensure that the employee's concerns are appropriately handled. In especially sensitive or obviously stressful situations, consideration should be given to having an EAP counselor present immediately following employee notification, interview and/or receipt of disciplinary action.

**Fitness For Duty (FFD) Evaluation** - A Division Head may request a Fitness For Duty (FFD) evaluation regarding an employee, subject to Title 5 CFR Part 339.3001. The criteria which must be met to warrant such an examination are the employee's conduct or behavior adversely impacts his/her ability to suitably perform the essential functions of the job, or his/her trustworthiness is questioned, and therefore, his/her security clearance could be withdrawn. The Division Head should contact the Administrative Services Division for additional information regarding this matter.

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**Security Division Referrals** - Contemporaneous to referring an employee's disciplinary matter to OPR, a Division Head can refer the same information to the Security Division for an assessment of the employee's ability to maintain a security clearance. The Security Division's independent determination of the employee's ability to maintain a security clearance may result in the suspension of the employee's security clearance and the employee's removal from FBI space on paid administrative leave pending resolution of the security issue(s).

**Ombudsman Program** - The FBI's Ombudsman provides a mechanism by which employees can obtain answers to questions involving work-related issues. As a neutral party, the Ombudsman also provides informal and impartial assistance to employees and managers while attempting to resolve work-related concerns.

**NOTE**

OPR is in the process of developing a Website that will contain the information contained in these guidelines, as well as down-loadable forms that are referenced in these guidelines.

**ACKNOWLEDGMENT FORM**

**ACKNOWLEDGMENT OF EMPLOYEE REQUIRED TO PROVIDE INFORMATION**

This is an official administrative inquiry regarding possible misconduct or the improper performance of official duties. In accordance with the Privacy Act of 1974, you are advised that the authority to conduct this interview is contained in Title 28, Code of Federal Regulations, Section 0.85(c).

This inquiry specifically pertains to \_\_\_\_\_

\_\_\_\_\_  
(State the general nature of the inquiry)

For purposes of this inquiry, you may be interviewed, asked to provide a written statement, or both, and the information you provide will assist in determining whether administrative action is warranted. You have a duty to participate in an interview or to provide written statements, and you can expect to be dismissed from the rolls of the FBI if you refuse to do so, or if you fail to respond fully and truthfully in any answers or written account you provide.

Neither your statements nor any information or evidence gained by reason of your statements can be used against you in any criminal proceeding, except that if you knowingly and wilfully provide false statements or information, you may be subject to criminal prosecution for that action. Pursuant to the Privacy Act, this

information is being sought for the purposes of an agency disciplinary proceeding. The information itself and any information or evidence resulting therefrom may be used in the course of this proceeding, which could result in disciplinary action, including dismissal. Information may be disclosed to other federal agencies for a law enforcement purpose; to employees of the Department of Justice in the performance of official duties; to the Judicial Branch of the Federal Government in response to a specific request or otherwise where disclosure appears relevant to the authorized function of the recipient judicial office or court system; and to an adjudicative body, such as the Equal Employment Opportunity Commission and the Merit Systems Protection Board when the United States, the FBI, or its employees, in an official capacity, are parties to or have an interest in the litigation, and such records are determined by the FBI to be relevant to the litigation. Disclosure may also be made in accordance with all other routine uses of the FBI's Central Records System.

ACKNOWLEDGMENT

I have read and understand my rights and obligations as set forth above

\_\_\_\_\_  
Signature of Official Conducting Inquiry

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

ATTACHMENT A

**SIGNED, SWORN STATEMENT (SSS) FORMAT W/ACKNOWLEDGMENT FORM**

*Prior to conducting the interview, the employee must be sworn in by the investigator. The employee will raise his/her right hand and the investigator will administer the oath by stating "do you swear or affirm that the information you are about to provide is true, accurate, and complete to the best of your knowledge?" The SSS pages should be numbered as set forth below. (SSS should use Times New Roman typeface with 12 point font) (This example is in 10 point font)*

Month, Day, Year (such as July 9, 2002)  
City, State (DATE AND PLACE WHERE  
INTERVIEW WAS CONDUCTED)

I, NAME INTERVIEWEE, having been duly sworn by Supervisory Special Agent (SSA) NAME, hereby make the following statement to SSA NAME and SSA NAME, whom I know to be SSAs of the Federal Bureau of Investigation (FBI), assigned to the NAME Division.

(IF INTERVIEWEE IS AN AGENT WITH PRIOR SERVICE AS A SUPPORT EMPLOYEE, ADJUST STATEMENT TO RECORD SUPPORT EOD AND AGENT EOD) (ADJUST STATEMENT IF INTERVIEWEE IS A SUPPORT EMPLOYEE) I entered on duty (EOD) on DATE, as a Special Agent (SA). Upon completion of my training at the FBI Academy, Quantico, Virginia, I was assigned to the NAME Division from DATE to DATE (MONTH and/or YEAR). I was transferred to the NAME Division and served in that division until transferred to NAME Division. I am currently assigned to the NAME Division, and (supervise) the ALFA-NUMBER squad with program responsibility for the \_\_\_\_\_ Programs or work on squad ALFA-NUMBER with program responsibility. My collateral duties are \_\_\_\_\_.

I understand this is an administrative inquiry regarding an allegation that (NAME OF EMPLOYEE) COPY ALLEGATION FROM SUBJECT'S "OPR NOTIFICATION FORM," SHOULD BE IDENTICAL WITH ACKNOWLEDGMENT FORM ALLEGATION. I have further been advised of my rights and responsibilities in connection with this inquiry as set forth on the form entitled "Acknowledgment of Employee Required to Provide Information" (Acknowledgment form), which I have read and signed. I understand from my review of the Acknowledgment form that should I "refuse to answer or fail to reply fully and truthfully" during this interview, which I further understand would place me in violation of the Director's "Bright Line" pronouncement, I can expect to be dismissed from the rolls of the FBI.

**ATTACHMENT B**

(TEXT OF STATEMENT)

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I have no other pertinent information regarding the aforementioned allegation. I have been advised that I may and should submit any additional information of which I may become aware, regarding this inquiry, to the FBI's Office of Professional Responsibility (OPR).

I will (will not) take a voluntary polygraph examination concerning the truthfulness of the information contained in this signed, sworn statement.

I have been instructed not to discuss this matter with anyone other than the person(s) conducting this interview, FBIHQ representatives from the OPR, the Ombudsman's office, and/or an FBI Employee Assistance Program (EAP) Counselor, or my attorney. I have been told that should I decide to discuss this matter with anyone else, I must first obtain authorization from the interviewer(s).

I have read this statement, consisting of this and NUMBER SPELLED OUT (NUMBER) (such as FOUR (4)) other pages, and it is true and correct to the best of my knowledge.

\_\_\_\_\_  
(Interviewee NAME)

Sworn to and subscribed before me on the DATE day of MONTH, YEAR (such as 11th day of JULY, 2002), in the city of CITY, STATE. (DATE AND PLACE WHEN EMPLOYEE SIGNS STATEMENT, NOT NECESSARILY THE INTERVIEW DATE)

\_\_\_\_\_  
(NAME)  
Supervisory Special Agent  
(NOT NECESSARILY THE PERSON WHO  
CONDUCTED THE INTERVIEW)

Witness:

\_\_\_\_\_  
(NAME)  
Supervisory Special Agent  
(NOT NECESSARILY THE PERSON WHO CONDUCTED THE INTERVIEW)

The signed, sworn statement (SSS) format is a typed, double spaced document. Prior to the interviewee signing the SSS, the interviewee will be placed under oath (sworn-in). After signing the SSS, the interviewee should initial the beginning and the end of the text of the SSS, on each page. This process will be witnessed by the two persons present when the interviewee swears the oath prior to initialing and signing the statement.

**UNSWORN, SIGNED, STATEMENT (SSS) FORMAT W/ACKNOWLEDGMENT FORM**  
(SSS should use Times New Roman typeface with 12 point font) (This example is in 10 point font)

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(Month; Day, Year)

I, \_\_\_\_\_, hereby make the following statement:

I understand this is an administrative inquiry regarding the allegation that \_\_\_\_\_

I have further been advised of my rights and responsibilities in connection with this inquiry as set forth on the *Acknowledgment of Employee Required to Provide Information*, which I have read and signed. I understand from my review of the *Acknowledgment* that should my following statement not be complete and truthful, I can expect to be dismissed from the rolls of the FBI.

(Statement follows)

I have no other pertinent information regarding the aforementioned allegation(s). I have been advised that I may and should submit any additional information of which I may become aware, regarding this inquiry, to the investigator.

I have been instructed not to discuss this matter with anyone other than the person conducting this investigation, representatives from the Office of Professional Responsibility (OPR), FBIHQ, FBI Employee Assistance Program (EAP) Counselors, my attorney (provided I have submitted the appropriate forms), or representatives of the Ombudsman's office. I have been told that should I decide to discuss this matter with anyone else, I must first obtain authorization from the investigator.

I will/will not take a voluntary polygraph examination concerning the truthfulness of the information provided in this statement.

I have read this statement, consisting of this and X other pages, and it is true, complete, and correct.

\_\_\_\_\_  
Employee's Signature/Date

\_\_\_\_\_  
Typed or Printed Name of Witness

\_\_\_\_\_  
Signature of Witness to Employee's Signature/Date

**ATTACHMENT C**

**NO ACTION LETTER**

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OIG-REQ 02/18/05-PART 12

FBI0000182

ADDUCED 16245 p.25

Date \_\_\_\_\_

PERSONAL

Mr. xxxxxx  
Federal Bureau of Investigation  
xxxxxxx

Dear Mr. xxxxx

This is to advise you of the conclusion of an administrative inquiry regarding allegations that you

\*\*\* (see below for variation to second paragraph)

I have reviewed the results of that inquiry and determined that it developed no facts warranting any administrative action pertaining to you. Accordingly, this inquiry is considered closed.

As you are aware, administrative inquiries are conducted to determine whether the actions of FBI personnel were proper and in accordance with the duties and responsibilities applicable to all FBI employees. In that respect, an objective and equitable administrative inquiry process benefits all FBI employees by safeguarding the Bureau's integrity and high standards.

I appreciate your patience and cooperation in this matter.

Sincerely yours,

SAC Name  
Special Agent in Charge  
\_\_\_\_\_  
Division

263-file number

1 - OPR/IIU-I or II [whichever applies]  
1 - OPR/AU-I or II [whichever applies]  
1 - OPR-Administrative Unit

\*\*\*I have reviewed the results of that inquiry and determined that the preponderance of the evidence does not establish that you committed the alleged misconduct. Accordingly, this inquiry is considered closed.

**ATTACHMENT D**  
**ORAL REPRIMAND - EC**

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 10/26/2001

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OIG-REQ 02/18/05-PART 12

FBI0000183

ADDUCED 10/26/01 p.26